

Message Text

CONFIDENTIAL

PAGE 01 SAN JO 02789 01 OF 02 041840Z

44

ACTION ARA-20

INFO OCT-01 ADP-00 SS-15 NSC-10 L-03 CIAE-00 INR-10

NSAE-00 RSC-01 JUSE-00 SCA-01 EB-11 SCS-03 CPR-02

DEAE-00 SNM-02 TRSE-00 RSR-01 PRS-01 USIA-15 VO-03

SSO-00 /099 W

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P 041740Z AUG 73

FM AMEMBASSY SAN JOSE

TO SECSTATE WASHDC PRIORITY 4736

C O N F I D E N T I A L SECTION 1 OF 2 SAN JOSE 2789

FOR ASST. SECRETARY KUBISCH AND DEPUTY
LEGAL ADVISER FELDMAN

E.O. 11652:N/A

TAGS: PFOR, CS

SUBJ: FOREIGN MINISTER RECOMMENDS WE
RENEGOTIATE EXTRADITION TREATY

1. DURING MY CONVERSATION WITH FOREIGN
MINISTER FACIO AUGUST 3, HE TOOK THE
INITIATIVE AND SUGGESTED THAT WE RENEGOTIATE
THE 1922 EXTRADITION TREATY TO MODERNIZE IT.
FACIO SAID HE SUGGESTED THIS BECAUSE THE
CONSEQUENCE OF THE COURT'S DECISION IN THE
VESCO CASE EMPHASIZED SERIOUS SHORTCOMINGS.
HE POINTED TO THE EXACT TWO AREAS THAT HAD
CONCERNED, VIS., THE VIRTUAL ELIMINATION
OF ANY PROCEDURE TO REQUEST PREVENTATIVE
ARREST WITHOUT PRESENTATION OF FULL
DOCUMENTATION AND THE EXPLICIT LIMITATION
OF WHAT CONSTITUTES EXTRADITABLE CRIMES TO
THOSE SPECIFICALLY ENUMERATED IN THE TREATY.
FACIO HIMSELF POINTED OUT THAT NARCOTICS
OFFENSES OR AIR PIRACY WOULD NOT BE EXTRA-
CONFIDENTIAL

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PAGE 02 SAN JO 02789 01 OF 02 041840Z

DITABLE UNDER THIS INTERPRETATION (I DO

NOT KNOW IF MULTILATERAL CONVENTIONS ON HIJACKING WOULD APPLY IN THIS RESPECT). HE ACKNOWLEDGED MY COMMENT THAT THE US WOULD BE BETTER OFF WITHOUT A TREATY THAN WITH ONE, SINCE THE COSTA RICAN EXTRADITION LAW WOULD THEN APPLY AND WOULD PERMIT EXTRADITION FOR ANY CRIME PUNISHABLE IN BOTH STATES. HOWEVER, FACIO SAID THAT DENOUNCING THE TREATY WOULD PLACE COSTA RICA IN A DISADVANTAGEOUS POSITION REGARDING EXTRADITION FROM THE US SINCE THERE WAS NO RECIPROCATING GENERAL REGIMEN APPLICABLE IN THOSE CASES. FACIO ADDED THAT A NEW TREATY OUGHT TO SPECIFICALLY TAKE INTO ACCOUNT DIFFERENCES IN COMMON LAW PROCEDURES SO THAT LOCAL COURTS AND JUDGES WOULD NOT BE CONFUSED BY SUCH THINGS AS "GRAND JURY INDICTMENTS". HE SAID THAT SINCE HE HAD TRAINING IN BOTH COMMON AND ROMAN LAW HE WOULD LIKE TO CLARIFY THIS DURING HIS INCUMBENCY, IMPLYING THAT HE WOULD SPEED A RENEGOTIATION PROCESS.

2. I TOLD THE MINISTER THAT THE CONSEQUENCES OF THE COURT'S DECISION ALSO WORRIED US, AND I HAD WANTED TO EXPLORE WITH HIM THE GOCR'S RECEPTIVITY TO MEETING THESE PROBLEMS. I SAID I WOULD INFORM MY GOVERNMENT OF HIS SUGGESTION AND BE BACK TO HIM.

3. AS YOU WILL RECALL, I RAISED THE POSSIBILITY OF MODERNIZING OUR TREATY WITH COSTA RICA DURING MY CONVERSATIONS WITH YOUR IN WASHINGTON. AFTER FURTHER ANALYSIS OF THE COURT'S DECISION IN THE VESCO CASE AND FURTHER DISCUSSIONS WITH OUR LAWYERS, I DEFINITELY CONCLUDE (AS DO OUR LAWYERS) THAT THE COURT'S DECISION SEVERELY RESTRICTS OUR FUTURE POSITION AND PRIVILEGES WITH REGARD TO THE EXTRADITION PROCESS GENERALLY, AND THAT THE WORST THING WE COULD

CONFIDENTIAL

CONFIDENTIAL

PAGE 03 SAN JO 02789 01 OF 02 041840Z

DO WOULD BE TO MERELY DO NOTHING AND ACCEPT THE STATUS QUO. AS THE FOREIGN MINISTER HAS POINTED OUT, THE DECISION VIRTUALLY ELIMINATES ANY EMERGENCY PREVENTATIVE ARREST PROCEDURE AND SEVERELY LIMITS THE SCOPE OF CRIMES FOR WHICH WE COULD OBTAIN EXTRADITION. (THE COURT'S DECISION ACCEPTS "USE OF CABLES TO COMMIT FRAUD" AS EXTRADITABLE PROVIDED

FRAUD IS ACTUALLY COMMITTED, RULING THAT FRAUD IS COVERED BY THE TREATY WHATEVER THE MEANS USED. IT SPECIFICALLY EXCLUDED ATTEMPTED FRAUD AS EXTRADITABLE, HOWEVER.) IT WOULD NOW APPEAR THAT WE WOULD BE UNABLE TO EXTRADITE ANYONE UNDER THE CURRENT TREATY FOR NARCOTICS OFFENSES, ATTEMPTED FRAUD, OR ANY NUMBER OF "MODERN" CRIMES.

4. TO BETTER OUR POSITION OUR ALTERNATIVES WOULD BE EITHER TO TERMINATE THE TREATY (WHICH WE COULD DO WITH SIX MONTHS NOTICE) OR NEGOTIATE A NEW ONE OR AN AMENDED ONE. AS REGARDS THE FIRST ALTERNATIVE, I KNOW THAT L HAS NUMEROUS RESERVATIONS, AND FACIO INDICATED COSTA RICA WOULD HAVE LEGITIMATE COMPLAINTS IN THIS REGARD ON THE RECIPROCITY QUESTION. THIS, THEREFORE, APPEARS TO BE AN UNDESIRABLE COURSE, ALTHOUGH I WOULD APPRECIATE L'S OPINION ON THE MERITS AND DEMERITS OF THIS AS AN INTERIM MEASURE SHOULD A RENEGOTIATION PROCESS APPEAR TO BE DRAWN OUT. IN THIS REGARD I NOTE THAT COSTA RICA IS NOT RPT NOT A SIGNATORY TO THE 1933 MONTEVIDEO CONVENTION, AND THEREFORE ASSUME THAT THAT CONVENTION TO WHICH WE HAVE SEVERAL RESERVATIONS WOULD NOT AUTOMATICALLY APPLY.

5. AS REGARD NEGOTIATION OF A NEW TREATY, I AM AWARE THAT WE HAVE A PRIORITY SCHEDULE FOR SUCH NEGOTIATION AND I CONCLUDE, HOWEVER, AND RECOMMEND, THAT COSTA RICA BE GIVEN HIGH CONFIDENTIAL

CONFIDENTIAL

PAGE 04 SAN JO 02789 01 OF 02 041840Z

PRIORITY IN THIS REGARD FOR THE FOLLOWING REASONS:

-) THE LIMITATIONS ON OUR CAPACITY TO EXTRADITE FROM COSTA RICA WILL NOW BE WIDELY KNOWN BECAUSE OF THE NOTRIETY AND PUBLICITY GIVEN TO THE VESCO CASE. COSTA RICA CAN THEREFORE VERY QUICKLY BECOME A REGUGE FOR ALL SORTS OF CRIMINALS--NARCOTICS OFFENDERS, HIJACKERS, FINANCIAL SWINDLERS. I BELIEVE THIS FEAR IS WHAT MOTIVATED FACIO TO TAK THE INITIATIVE.
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PAGE 01 SAN JO 02789 02 OF 02 041846Z

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ACTION ARA-20

INFO OCT-01 ADP-00 SS-15 NSC-10 L-03 CIAE-00 INR-10

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SSO-00 /099 W

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P 041740Z AUG 73

FM AMEMBASSY SAN JOSE

TO SECSTATE WASHDC PRIORITY 4737

C O N F I D E N T I A L SECTION 2 OF 2 SAN JOSE 02789

FOR ASST. SECRETARY KUBISCH AND DEPUTY LEGAL
ADVISER FELDMAN

E.O. 11652: N/A

TAGS: PFOR, CS

SUBJ: FOREIGN MINISTER RECOMMENDS WE
RENEGOTIATE EXTRADITION TREATY

B) QUICK INITIATION OF NEW NEGOTIATIONS
WOULD ITSELF PLACE SOME PRESSURES ON VESCO,
AND PERHAPS CHANGE ANY LONG RANGE PLANS HE
HAS FOR SETTLING HERE. IT WOULD ALSO BE
HELPFUL TO OUR PUBLIC IMAGE HERE.

C) SINCE WE HAVE IN EFFECT A REQUEST FROM
THE GOCR TO RENEGOTIATE THE TREATY, TO DECLINE
TO DO SO OR TO DRAG OUR FEET WILL PLACE OUR
SERIOUSNESS AND CREDIBILITY IN THE VESCO
(OR ANY EXTRADITION PROCESS) CASE IN QUESTION
AND IF EFFECT REBUFF THE GOCR. IT WILL ALSO
BECOME KNOWN PUBLICLY, AND WILL BE ASSUMED
BY THE PUBLIC TO MEAN WE HAVE AND HAD NO
SERIOUS INTEREST IN EXTRADITING VESCO.

6 ACTION REQUESTED: ACCORDINGLY, I ASK:

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PAGE 02 SAN JO 02789 02 OF 02 041846Z

A) THAT AUTHORIZATION BE OBTAINED TO
RENEGOTIATE THE EXTRADITION TREATY AND THAT
COSTA RICA BE GIVEN HIGH PRIORITY IN THIS
REGARD:

B) THAT IN TURN I BE AUTHORIZED TO
RESPOND AFFIRMATIVELY TO FACIO'S SUGGESTION
ANS SOON AS POSSIBLE; AND

C) THAT IN THE MEANTIME I BE PROVIDED
WITH FULL INFORMATION REGARDING WHAT IT IS
WE SEEK IN SUCH NEW TREATIES AND WHAT OUR
REQUIREMENTS ARE, TOGETHER WITH ANY SAMPLES
OF ACTUAL WORDING.
VAKY

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